

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

MOTION FOR PERMISSION TO FILE FISA REPLY MEMORANDUM
UNDER SEAL AND MOTION FOR EXTENSION TO FILE
FISA REPLY MEMORANDUM

Defendant, Hatem Naji Fariz, by and through undersigned counsel, respectfully requests that this Honorable Court permit Mr. Fariz to file, under seal, his reply memorandum to the Government's Memorandum Regarding the Constitutionality of the Foreign Intelligence Surveillance Act ("FISA") (Doc. 844) and Unclassified Memorandum Regarding the Disclosure of FISA Applications, Orders and Related Materials and the Authorization and Conduct of the FISA Electronic Surveillances (Doc. 845). Mr. Fariz also respectfully requests, pursuant to Federal Rule of Criminal Procedure 45(b), an extension of time, up to and including Wednesday, January 26, 2005, to file the memorandum. As grounds in support, Mr. Fariz states:

1. One issue addressed in Mr. Fariz's reply concerns the government's failure to minimize, as required by 50 U.S.C. § 1801(h). During the government's approximately ten-years of electronic surveillance in this case, the government recorded, retained, and disseminated every single telephone call. Mr. Fariz contends that the government failed to minimize, as required by 50 U.S.C. § 1801(h), since it retained and disseminated every phone

call, regardless of its irrelevance to foreign intelligence or law enforcement purposes. The undersigned has prepared summaries of a number of telephone calls to illustrate that the terms of FISA have been violated, and therefore that the privacy rights of Americans have been violated.

2. In order to ensure that these individuals' privacy rights are not further violated, counsel for Mr. Fariz would respectfully request permission to file the reply memorandum under seal. While Mr. Fariz recognizes that the Protective Order governing the FISA intercepts provides that the order does not "restrict in any way the right of the defense to use the FISA intercepts in connection with any pleading or proceeding in this case," (Doc. 270 at 2), out of an abundance of caution, and to protect the privacy of those involved in these communications, Mr. Fariz requests permission to file his memorandum under seal. Alternatively, Mr. Fariz would respectfully request permission to file two reply memoranda: one in which the summaries are redacted, and the second, filed under seal, in which the summaries are included.

3. Mr. Fariz would additionally request two additional business days, or through January 26, 2005, in which to file his reply memorandum. Mr. Fariz respectfully requests two additional business days to determine whether the reply may be filed under seal. Additionally, while the reply memorandum is substantially complete, counsel for Mr. Fariz would also respectfully request the two additional business days to ensure a thorough, yet concise, reply regarding the numerous issues involved in this Court's consideration of

whether to order the disclosure of the FISA applications, orders, and related materials and whether to suppress the FISA intercepts.

4. The undersigned attempted to contact Assistant United States Attorneys Walter Furr and Terry Zitek, but was unable to reach them prior to the filing of this motion.

WHEREFORE, Defendant, Hatem Naji Fariz, respectfully requests (1) permission to file his FISA reply memorandum under seal, and (2) an extension of time, up to and including January 26, 2005, to file his FISA reply memorandum.

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Florida Bar No. 0800031
Assistant Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Telephone: 813-228-2715
Facsimile: 813-228-2562
Attorney for Defendant Fariz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Public Defender